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[illegible] and 10 times that of commercial [illegible] without any appreciable increase in capability or reliability. Other such examples abound. It takes over 20 pages of specifications to buy hot chocolate and 17 pages of specifications to buy olives.

Unfortunately, these problems are not new. They have been created by a system that has been built piece by unorganized piece over the last 35 years. Regulations and procedures have been added a few at a time, often with the good intention of protecting the Government from a few unscrupulous contractors or a few incompetent or dishonest government purchasing officers. The system that has resulted however, honors form over good management and business judgment. We have taken away the initiative of both contractors and government employees to seek the best value for the Government. Indeed, we have created a system in which only the most adventurous or, perhaps at times, only the most foolhardy dare participate.

These problems continue to exist today for a variety of reasons. We in Congress have not paid enough attention to them. Government procurement policymakers have not given them the management attention they require. We have not trained our procurement personnel in the proper procedures for buying commercial products. Indeed, we depend upon "competition by specification" rather than "competition by performance."

I am introducing legislation today that will help solve some of these problems and bring some common sense back into Government procurement. This legislation would require civilian Government contract personnel to look first to the commercial marketplace for the items they need to buy. It is very similar to a military procurement provision that was incorporated into the Department of Defense authorization bill for fiscal year 1987.

Now many of my colleagues may not consider this a revolutionary idea—and they are right. For at least the past 15 years, Government and industry reports and agency initiatives have all recommended that the Government make better use of the products in the commercial marketplace rather than relying on Government-written, detailed design specifications.

A comprehensive commercial product procurement policy can save the Government money, save the commercial vendors money, increase competition as more companies are willing to sell their products to the Government, decrease acquisition lead time and overhead costs, and increase product quality and capabilities as the latest proven technology is incorporated into commercial products at a far faster rate than the Government can write specifications.

I would like to say that my legislation is unnecessary. Unfortunately, I cannot. We have created a system where program managers and contract officers are more likely to make decisions based upon protecting their careers and avoiding publicity rather than obtaining the best value for the Government. After 15 years of reports and agency generated initiatives that have failed, I believe it is time Congress acted.

The basics of my legislation and the solution to some of these problems are straight forward. Each executive agency must comply with a two-step process in order to purchase the products it needs. First, the agency must define its requirements in such a way as to take advantage of commercial products and other nondevelopment items to the maximum extent practicable. This means that at the very beginning of the acquisition planning process, Government procurement officers must look to the commercial marketplace to determine if existing products can meet their needs. And if existing items cannot meet the stated needs, the Government procurement officers need to go back to the actual users to determine if the needs are correctly stated or to determine if maybe they can't be changed so that existing products can be used.

The second step is just as simple. Executive agencies are required to buy commercial and other nondeveloped items to the maximum extent practicable. This is not policy direction. This is not just hortatory language that the agencies can ignore. This is a positive mandate directing agency personnel to take advantage of a proven procurement method that will benefit both the Government and commercial vendors.

Once this legislation is enacted, what we will no longer see or hear about are the stories that involve 33 pages of detailed design specifications on how to make dehydrated potatoes that can be sold to the Government or 20 pages of specifications for Federal hot chocolate. With technology-based items involving computer technology and advanced electronics, the potential savings are even greater as the Government can eliminate much of the research, development, and testing costs it now pays for when buying products developed to government specifications.

Mr. Speaker, we can no longer afford to support a procurement system that does not incorporate the advantages of an existing and sophisticated commercial marketplace. We must begin now to retrain our government purchasing officers to depend on good management practices and commercial products and procedures. We will save money. We will encourage small and currently disinterested companies to begin competing for government business as the process is simplified. And we will buy products that work.

GAO DOES NOT AND SHOULD NOT HAVE ACCESS TO CIA CONFIDENTIAL FUNDS TRANSACTION RECORDS

HON. BOB STUMP

OF ARIZONA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 10, 1986

Mr. STUMP. Mr. Speaker, when the executive branch and the Congress established the Central Intelligence Agency after the Second World War, they recognized that the effective conduct of intelligence activities requires secrecy. In the laws establishing the CIA and providing its basic authorities, they took great care to provide for such secrecy, and subsequent legislation has preserved it. One critical aspect of that secrecy is protection of information relating to CIA financial transactions integral to sensitive intelligence activities. For this reason, the laws of the United States do not give the Comptroller General, who heads the General Accounting Office, a right of access to CIA financial transactions with confidential funds, a right to those laws grant to the intelligence committees of the Congress.

The subject of GAO access to records has arisen in the context of title II of the Military Construction Appropriations Act, as incorporated in the Continuing Appropriations Resolution, 1987, which provides for a program of $100 million in assistance to the Nicaraguan Democratic Resistance. Title II permits the President to designate the agency or agencies which will administer the $100 million. If the President designates, for example, the Department of State or the Agency for International Development to administer all or part of the program funds, the GAO will have access to the financial transactions and related records for that portion. If the President finds it necessary for the success of the program to designate the CIA to administer all or part of the aid program funds, the GAO will not have access to those financial transactions and related records to the extent that the CIA receives the funds by transfer and expends them as confidential funds under section 8(b) of the CIA Act. The intelligence committees of the Congress will, however, have full access to those transactions and records. Consequently, if the President designates the CIA to administer the funds for support of the Nicaraguan Democratic Resistance, then the intelligence committees of the Congress, and not the GAO, will perform the role of oversight of CIA use of and accounting for the funds.

The Congress addressed the secrecy of intelligence activities in the statute creating the CIA. Section 102(d)(3) of the National Security Act of 1947 (50 U.S.C. 403(d)(3)) provided that "the Director of Central Intelligence shall be responsible for protecting intelligence sources and methods from unauthorized disclosure." As the Supreme Court has stated, with this provision "Congress vested in the Director of Central Intelligence very broad authority to protect all sources of intelligence information from disclosure." (*CIA* v. *Sims*, No. 83-1075, slip op. 9 (1985))

Two years later, the Congress enacted the Central Intelligence Agency Act of 1949 (50 U.S.C. 403a et seq.), providing the administrative and financial authorities that CIA needed to conduct its activities effectively, such as the authority to transfer to and receive from other agencies funds free from restrictions on the appropriations from which the funds are transferred. The CIA Act contained provisions for maintaining the secrecy of CIA activities, including specifically the secrecy of CIA financial transactions. Section 6 of the CIA Act provides that:

> The Agency shall be exempted from [a repealed act] and the provisions of any other laws which require the publication or disclosure of the organization, functions, names, official titles, salaries, or numbers of personnel employed by the Agency.

Section 8(a) of the CIA Act provides that:

> Notwithstanding any other provisions of law, sums made available to the Agency by appropriation or otherwise may be expended for purposes necessary to carry out its functions.

And section 8(b) provides that:

> The sums made available to the Agency may be expended without regard to the provisions of law and regulations relating to the expenditure of Government funds; and for objects of a confidential, extraordinary, or emergency nature, such expenditures to

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be accounted for solely on the certificate of the Director and every such certificate shall be deemed a sufficient voucher for the amount therein certified.

In commenting in 1948 on a draft of the CIA Act, the Comptroller General acknowledged the importance of maintaining strict secrecy in CIA activities. Then-Comptroller General Lindsay Warren stated that

While [the procurement, funds transfer, and confidential funds sections] of the proposed enactment provide for the granting of much wider authority than I would ordinarily recommend for Government agencies generally, the purposes sought to be obtained by the establishment of the Central Intelligence Agency are believed to be of such paramount importance as to justify the extraordinary measures proposed therein. The importance of obtaining, correlating, and disseminating to proper agencies of the Government intelligence relating to national security under present international conditions cannot be overlooked. In an atomic age, where the act of an unfriendly power might, in a few short hours, destroy, or seriously damage the security, if not the existence of the nation itself, it becomes of vital importance to secure, in every practicable way, intelligence affecting its security. The necessity for secrecy in such matters is apparent and the Congress apparently recognized this fully in that it provided in section 102(d)(3) of Public Law 253, that the Director of Central Intelligence shall be responsible for protecting intelligence sources and methods from unauthorized disclosure." (B-74185, Mar. 12, 1948).

Taken together, the National Security Act provision for the protection of intelligence sources and methods, the CIA Act provision exempting CIA organization, functions, and personnel data from laws requiring disclosure, and the CIA Act provision for CIA confidential funds—also occasionally called unvouchered funds or certificated funds—provide clear authority for secrecy in the conduct of intelligence operations, including the secrecy of CIA financial transactions with confidential funds. With respect to CIA financial transactions with confidential funds under section 8(b) of the CIA Act, the secrecy for which the law provides excludes the GAO from access to the transactions and related records.

The Comptroller General's authorities and responsibilities concerning financial records of Federal agencies stem from several sections of title 31 of the United States Code. Section 712 of title 31 contains a general direction to the Comptroller General to "investigate all matters related to the receipt, disbursement, and use of public money;" to "analyze expenditures of each executive agency the Comptroller General believes will help Congress decide whether public money has been used and expended economically and efficiently;" and to "make an investigation and report ordered by either House of Congress or a committee of Congress having jurisdiction over revenue, appropriations, or expenditures." As a general matter, to the extent that this direction to the Comptroller General might be construed to carry with it an implied instruction to Federal agencies to disclose information to the Comptroller General, section 102(d)(3) of the National Security Act and sections 6 and 8 of the CIA Act provide the authority under which, should the secrecy essential to the success of intelligence activities so require, the Director of Central Intelligence could decline to provide information requested by the Comptroller General on the basis of section 712. In any event, because Congress has legislated very specifically with respect to GAO access to CIA confidential funds transactions under section 8(b) of the CIA Act, the general provisions of section 712 would not govern that specific issue.

Section 3523(a) of title 31 provides: "Except as specifically provided by law, the Comptroller General shall audit the financial transactions of each agency." Section 8(b) of the CIA Act, especially when considered together with section 102(d)(3) of the National Security Act and section 6 of the CIA Act constitutes a law providing otherwise, so that the GAO auditing requirement of section 3523(a) does not apply to CIA confidential funds transactions under section 8(b).

Similarly, with respect to government unvouchered funds transactions, section 3524(a)(1) of title 31 provides:

The Comptroller General may audit expenditures, accounted for only on the approval, authorization, or certificate of the President or an official of an executive agency, to decide if the expenditure was authorized by law and made. Records and related information shall be made available to the Comptroller General in conducting the audit.

However, section 3524(d) provides that section 3524 "does not * * * affect the authority under section 8(b) of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403j(b))." Thus, section 3524 does not permit the General Accounting Office to audit CIA confidential funds transactions under section 8(b) of the CIA Act.

Section 716(a) of title 31 provides:

Each agency shall give the Comptroller General information the Comptroller General requires about the duties, powers, activities, organization, and financial transactions of the agency. The Comptroller General may inspect an agency record to get the information. This subsection does not apply to expenditures made under section 3524 or 3526(e) of this title.

The inartfully drafted reference to section 3524 makes section 716 inapplicable insofar as it might otherwise require the CIA to give the Comptroller General information or access to records concerning CIA confidential funds transactions under section 8(b) of the CIA Act.

Section 716(c) of title 31 authorizes the Comptroller General in certain circumstances to bring a civil action in Federal district court to enforce his subpoena for Federal agency records, but section 716(d)(1) provides that the Comptroller General may not sue to enforce his subpoena if the record sought "related to activities the President designates as foreign intelligence or counterintelligence activities." Thus, section 716 would not permit the Comptroller General to sue in Federal district court to enforce a subpoena he issued seeking records relating to CIA confidential funds transactions under section 8(b) of the CIA Act.

Although the congress has determined by law that the GAO should not have access to CIA confidential funds transactions under section 8(b) of the CIA Act, those transactions remain subject to strict controls. The CIA Office of Finance develops and implements systems to account for all CIA funds, maintains the records and accounts of CIA financial operations, and performs audits. Independently within the CIA, the CIA Office of Inspector General conducts financial and program audits of CIA components, including program audits pursuant to audit standards set by the Comptroller General. In these audits, the CIA Office of Finance and the Office of Inspector General have access to CIA financial records, including confidential funds transactions under section 8(b) of the CIA Act and related records.

While the Congress recognized that the secrecy essential to intelligence activities required that GAO not have access to CIA confidential funds transactions under section 8(b) of the CIA Act, the Congress also recognized that, given the extraordinary nature of intelligence activities, occasions might arise in which the necessities of good government require that an authority external to the CIA review such transactions. Thus, in the very statute in which Congress made clear that the GAO would not have access to section 8(b) confidential funds transaction information (31 U.S.C. 3424), the Congress provided that:

Information about * * * a financial transaction under section 8(b) of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403j(b)) may be reviewed by the Permanent Select Committee on Intelligence of the House and the Select Committee on Intelligence of the Senate.

Thus, the two intelligence Committees of the Congress enjoy clear and full authority to review CIA confidential funds transactions under section 8(b) of the CIA Act, should they find it necessary to do so.

The statutory scheme established by the Congress with respect to access to CIA confidential funds transactions excludes the GAO from such access but permits the intelligence committees of the Congress to act as an external review authority. This system properly accommodates two compelling governmental interests: maintenance of the secrecy essential to intelligence activities and proper accountability for public funds.

KILDEE HONORS COURT STREET UNITED METHODIST CHURCH ON ITS 150TH ANNIVERSARY

HON. DALE E. KILDEE

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Friday, October 10, 1986

Mr. KILDEE. Mr. Speaker, I rise today to bring to the attention of my distinguished colleagues in the House of Representatives and to the Nation a celebration that will be held October 12 through 19, 1986, in Flint, MI. Through these dates, the Court Street United Methodist Church of Flint is observing its 150 years of service.

Added to the State Register of Historic Sites in 1979, the Court Street United Methodist Church is the oldest organized church in Flint. In the early 1830's the church's founder Rev. William Brockway, came to Flint once a month to preach. His first sermons were held in the Wait Beach Bar and later in the Stage and Wright store. In 1836, Reverend Brockway assisted in the founding of the Flint River Mission. Later, the mission was to become the Court Street United Methodist Church. In 1841, trustees of the church sought land in order to erect their first building. They pro-

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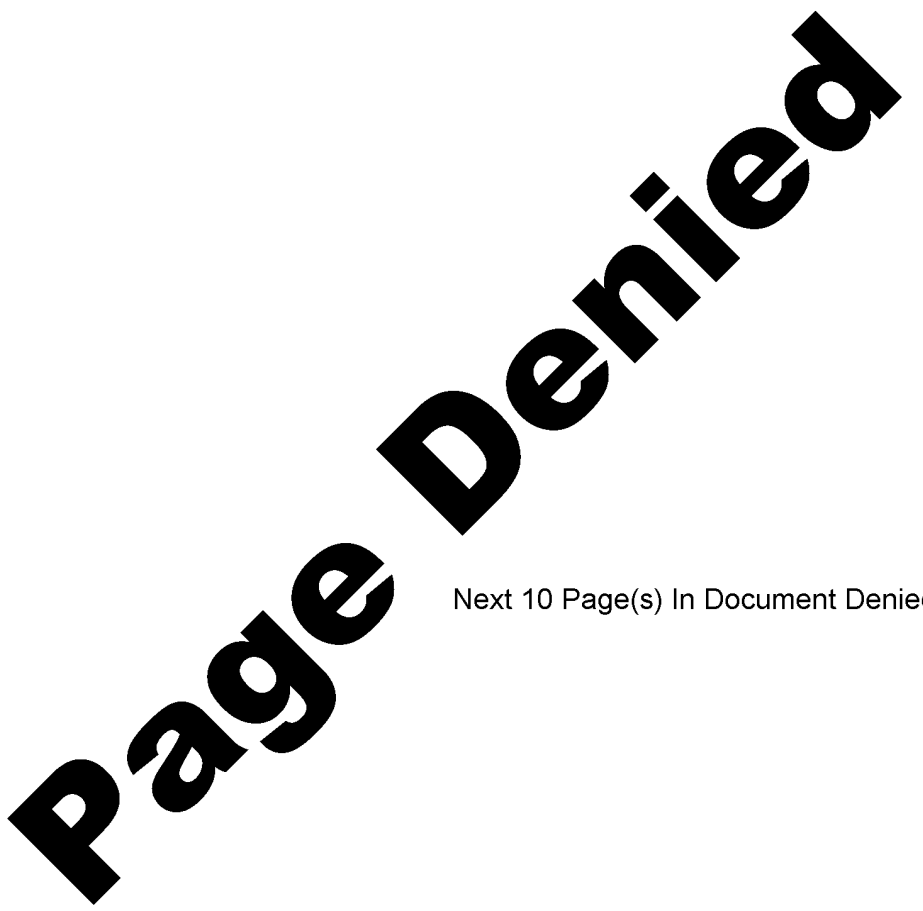

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